88-1813

Supreme Court, U.S.
FILED
APR 11 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1988

THOMAS J. RALEY
Petitioner

v.

FRANKLIN W. HUGHES and SANDRA L. HUGHES
Respondents

WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS
OF MARYLAND

APPENDIX

Joseph F. Lentz, Jr.
Lentz, Hooper, Jacobs & Blevins, P.A.
222 St. Paul Place, 5th Floor
Baltimore, Maryland 21202
(301) 685-8718
Counsel for Petitioner

OPINION OF THE HON. LEONARD S. JACOBSON, ASSOCIATE JUDGE, IN THE CIRCUIT COURT FOR BALTIMORE COUNTY MARYLAND, CASE NO. 86-CG-2023, SEPTEMBER 22, 1987

THE COURT: Okay. Thank you. Thank you, Mr. Keller.

Gentlemen, I don't have much problem with this case after hearing all the testimony, frankly. I had a little problem at the end of the plaintiff's case on a motion, but everybody agrees that this case is brought pursuant to Subtitle 2 of Commercial Law 15-201 and the following sections. 15-201 is the definition section. 15-202 defines insolvency for the purposes of this section. 15-203 defines fair consideration. And 15-204, 205, 206, and 207 and 208 define the various conveyances which can be found to be fraudulent under the section.

We start in reverse with 15-208, conveyance of partnership property. And there is no evidence in this case that this was a conveyance of partnership property. So that that section is not applicable.

15-207, conveyance made with intent to defraud. Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud present or future creditors, is fraudulent as to both present and future creditors.

There is no evidence in this case of any intent to defraud.

206 covers conveyances made and obligations incurred without fair consideration when the person who makes the conveyance or enters into the obligation intends or believes that he

will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors.

There is no evidence in this case that that section is applicable.

15-205, every conveyance made without fair consideration when the person who makes it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors.

There is no evidence that that is applicable in this case, because there was no testimony, number one, that the conveyance left Mr. Hughes with unreasonably small capital. There is no evidence that the conveyance was made without fair consideration. As a matter of fact, the Beccio case stands for the

proposition that a conveyance to a relative without fraudulent intent and upon fair consideration, though rendering the grantor insolvent, is not necessarily a fraudulent conveyance.

Finally, 15-204, every conveyance made and every obligation incurred by a person who is or will be rendered insolvent by it is fraudulent as to creditors without regard to his actual intent, if the conveyance is made or the obligation is incurred without a fair consideration.

I have no evidence in this case that the conveyance was made without fair consideration. As a matter of fact, the evidence is to the contrary. The consideration for the conveyance of an interest in the corporation to Mrs. Hughes was her signing and obligating herself on the mortgage and the loans

which Mr. and Mrs. Hughes made to pay off their debts, principally the debts of the business.

Nor do I have any evidence that Mr. Hughes was insolvent on December 31, 1979 when he made that conveyance. I recognize that the burden of proof shifts to the defendants under the Lacey v. Van Royen case. And the Lacey v. Van Royen case also stands for the proposition that the presumption of law may be repelled by proving that the grantor at the time of the gift was possessed of other means amply sufficient to pay all of his debts, and the onus of so proving is upon those seeking to uphold the gift.

In this case, I find from the evidence in this case, which I find credible, that Mr. Hughes was able to pay his debts. I have no evidence in this case that under the definition of

insolvency in 15-202, that the fair market value of his assets was less than the amount required to pay his probable liability on his existing debts as they became absolute and matured. I, therefore, find for the defendants for costs.

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 91

September Term, 1988

THOMAS J. RALEY

v.

FRANKLIN W. HUGHES, ET UX.

Wilner
Bell, Rosalyn B.
Pollitt,

JJ.

PER CURIAM

Filed: September 26, 1988

Appellant, who holds a substantial judgment against Franklin W. Hughes, sued to set aside as fraudulent the transfer by Mr. Hughes of his stock in F.W. Hughes, Inc. to himself and his wife Sandra L. Hughes, as tenants by the entireties. The Circuit Court for Baltimore County, sitting without a jury, found no evidence that the transfer was made without fair consideration or that Mr. Hughes was insolvent when he made the transfer, and, on that basis, entered judgment for Mr. and Mrs. Hughes. Taking issue with those conclusions, appellant has brought this appeal.

At some point in the early 1970's, appellant and Hughes entered into an agreement to operate a business known as Holiday House Bar at 6427 Hartford Road in Baltimore City. In May, 1975, F. Hughes, Inc., a corporation formed by

Hughes and in which he was the sole stockholder (100 shares), bought appellant's interest in the business and the real estate. Title to the business was transferred to the corporation; title to the real estate was to be transferred by appellant when certain mortgages on the property, which the corporation assumed, were paid. As modified by agreement of January 11, 1978, the net sales price was $188,000 which Hughes, individually, agreed to pay in certain weekly installments, commencing August 1, 1977.[1] The parties added this caveat,

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[1]For the first year (August 1, 1977 - July 30, 1978), Hughes was to pay $200 a week; for the next three years, the weekly payment was increased to $300 a week. As the unpaid balance was to bear interest at the rate of 10% per year, the parties acknowledged that, at the end of four years, the debt would aggregate $212,000, which Hughes was to amortize by weekly payments of $525.73, commencing August 1, 1981, and continuing through August 1, 1996.

however:

> "Mr. Raley agrees and recognizes that there may be times in the future during the term of this agreement that the full payments may not be made by Mr. Hughes, because of the uncertainties involved in the operation of the business in question. At such times as Mr. Hughes is not able to make the full payments, on a timely basis, he shall give notice to Mr. Raley of the fact. Mr. Raley agrees that this note will not be in default unless Mr. Hughes shall be in arrears in his payments for a period of three (3) months or longer. In the event Mr. Hughes is deemed to be in default, Mr. Raley agrees further that no action shall be taken on the note until he shall give a notice of default by registered mail to Mr. Hughes giving Mr. Hughes a period of two (2) weeks thereafter to correct any and all deficiencies in payment."

At some point in late 1978 or 1979, Mr. Hughes ceased making the weekly payments. Perhaps because appellant was incarcerated between 1977 and 1981, following his conviction for assault, no

formal action was taken. In April, 1981, he wrote to Mr. Hughes, informing him that, because the agreement was "exceedingly delinquent," he (appellant) was "currently preparing to foreclose on the property described therein." Notwithstanding this letter, nothing was done until January, 1983, when appellant sued Hughes for breach of contract.[2] On July 17, 1985, following a trial, the Circuit Court for Baltimore County entered judgment against Hughes in the amount of $358,085. A "Judgment Worksheet" showing how that amount was calculated indicates that the last payment on the debt was made on November 18, 1978.

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[2]No action to foreclose was ever filed; indeed, it is apparent that appellant had only a promissory note and thus no security interest in or mortgage on any specific property of Hughes.

In an effort to collect on his judgment, appellant sought to attach the 100 shares of stock of F. Hughes, Inc. that he believed were owned by Hughes. During that proceeding, evidence was produced that, on December 31, 1979, Hughes had transferred the stock to himself and his wife as tenants by the entireties, in consequence of which the attachment case was dismissed. This action, filed in May, 1986, followed, appellant claiming that (1) he was unaware of the transfer until December, 1985, (2) the transfer had been made without consideration, in contemplation of a judgment being entered against Hughes, to avoid his only major creditor (appellant), and to prevent the stock from being attached, and (3) the transfer was therefore fraudulent as to appellant. He asked that the transfer be set aside.

In announcing its decision at the end of the case, the court went through the several sections of the Commercial Law article comprising the subtitle on Fraudulent Conveyances and concluded that the relevant provisions were:

§ 15-204:

"Every conveyance made and every obligation incurred by a person who is or will be rendered insolvent by it is fraudulent as to creditors without regard to his actual intent, if the conveyance is made or the obligation is incurred without a fair consideration."

§ 15-202(a):

"A person is insolvent if the present fair market value of his assets is less than the amount required to pay his probable liability on his existing debts as they become absolute and matured."

and

§ 15-203:

"Fair consideration is given for property or an

obligation, if:

> (1) In exchange for the property or obligation, as a fair equivalent for it and in good faith, property is conveyed or an antecedent debt is satisfied; or
>
> (2) The property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained."

The court noted in its discussion § 15-207, making fraudulent a conveyance made "with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud present or future creditors" but found "no evidence in this case of any intent to defraud."

Mixing, to some extent, the concepts stated in §§ 15-204 and 15-207, appellant makes what is essentially an evidentiary attack on the court's conclusions. He urges that the burden was on Hughes to

sustain the validity of the transfer and that, on this record, Hughes failed to meet that burden. He points to "several badges of fraud" evident in the case, from which fraud may be inferred.

We are not concerned, at this stage, with burdens and standards of proof. The trial court gave no indication that it was placing a burden on the wrong party or applying an inappropriate standard. It simply found that the evidence did not establish the statutory prerequisites for setting aside the transfer. Our function, then, is to review the evidence, in a light most favorable to Hughes, to see if the court's conclusions were well-founded, i.e., whether there was any substantial evidence in support of them. We shall focus on the three critical findings: (1) that there was no actual intent to defraud appellant and therefore

no basis for applying § 15-207, (2) that there was "fair consideration" for the transfer, and (3) that, at the time of the transfer, Hughes was not insolvent and was not rendered insolvent by the transfer.

Mr. Hughes testified that he transferred the stock to the marital entity on the advice of his accountant, Melvin Rose. He stated, on cross-examination:

> "Q Did anyone ever tell you, Mr. Hughes, that if you transferred the stock to you and your wife, that would protect you against the creditor of Mr. Raley?
>
> A No, sir.
>
> Q Did you know, Mr. Hughes, that by transferring the shares of stock to you and your wife to tenants by the entireties, then Mr. Raley as a creditor could not attach that?
>
> A No, sir."

Mr. Rose testified that, at the

time, Hughes and the business, though solvent, had a lot of debts and were in arrears on some of them. He was unaware of the debt to appellant. He said that he advised Hughes to transfer the real estate from the corporation to himself and his wife, as tenants by the entireties, and then lease it back to the corporation, and also to put the stock in both names as tenants by the entireties. Rose, who was initially called as a witness for appellant but later testified as well for Hughes, was not asked and did not volunteer any particular reasons for his advice to the Hugheses. He said merely that he told them that the transfer "would be to their best interests."

Looking at all of the evidence, some of which we shall summarize below, a trier of fact could well have inferred an

intent to defraud from the circumstances surrounding the transfer. But such an inference is by no means compelled as a matter of law. The direct evidence bearing on Hughes's state of mind suffices to establish an innocent -- i.e., non-fraudulent -- intent, and that is the evidence upon which the court obviously, and permissibly, chose to rely. We shall read its statement that there was "no evidence in this case of any intent to defraud" in that light.

The evidence bearing on "fair consideration" is not altogether clear, as some of the testimony seemed to ramble between events in 1975, 1977, and 1979. It does appear, however, that (1) as part of the purchase of the business, Mr. and Mrs. Hughes were obliged to assume liability for or guarantee certain debts of the business, and (2) in order to

discharge or bring current some of those debts, Mr. Hughes joined with her husband in borrowing money from Equitable Trust Co., and, as security for the loan, placing a second mortgage on their home, which was titled as tenants by the entireties.[3] Mrs. Hughes testified that, when she signed that mortgage to Equitable Trust Co. in 1975, it was her understanding that she would be "a half owner" in the corporation. In 1977, Mr. and Mrs. Hughes had to consolidate a number of loans; according to Mr. Hughes, "at that time, we both had to sign on two different loans, General Electric and also Equitable Trust, both of us had to sign, and also we had to sign on our house."

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[3]The amount of the loan is not clear from this record. There are references to both $55,000 and $65,000.

A fair inference can be drawn that (1) Hughes could not have purchased the business or operated it for very long without his wife's cooperation in pledging the jointly held property as collateral and in co-signing notes to at least two financial institutions, (2) Mrs. Hughes expected to be given a 50% ownership in return, and (3) the consideration was "a fair equivalent" for the transfer of stock in 1979. See, in general, Kennard v. Banking & Trust Co., 176 Md. 499 (1939) and cases cited therein. The court's finding of "fair consideration" (or lack of evidence of no fair consideration) is therefore not clearly erroneous.

The evidence as to the solvency of Mr. Hughes was almost entirely opinion evidence. No financial statements of any kind bearing on his status in 1979 were

offered. Mr. Hughes testified, on the one hand, that, in 1979,

> "[w]hen Mr. Rose came to see me, we were in financial difficulties with taxes and mortgages. Just about every part of the business was in debt. And when Mr. Rose came to see me, he basically gave me a list of about five things I better do, or I'd be out of business."

He also stated, however, that, at that time, he was making payments on all of his debts and that he had not been sued by anyone. Mr. Rose, though unaware of the long-term debt to appellant, testified that, "to the best of my knowledge," Hughes was solvent at the time of the transfer and had remained solvent through the date of trial. He was unaware of any judgments against Hughes and said, directly:

> "Q Are you aware that Frank Hughes has sufficient assets to pay his debts as they accrue in the ordinary course of busi-

ness?

A Yes."

He iterated his opinion as to Hughes's solvency on cross-examination:

"Q I see. So in 1979, as you heard testimony, you have been sitting here, that there was a conveyance of stock from Mr. Hughes to Mr. Hughes and his wife. In 1979, you didn't know if he was solvent or not, did you? Yes or no, Mr. Rose?

. . .

A Yes. I knew that he was solvent.

Q How did you know that, Mr. Rose, if you didn't handle his personal affairs in 1979?

A His personal affairs were intertwined with the corporation. When you say his personal affairs, Mr. and Mrs. Hughes were the average American family, I would say, that have the usual income tax return, when there is just one W-2 form involved. They have their mortgage and responsibilities.

Had there been any judgment or any threatening letters by their mortgagee, I

> would certainly have come across it in my investigation of all of the affairs pertaining to the corporation, because they were both personally liable and responsible for various indebtedness."

In the absence of any financial statements indicating exactly what Mr. Hughes's assets, liabilities, income, and expenses were in 1979, the court was left with only this evidence from Mr. Hughes and his accountant that he was solvent and able to pay his bills as they came due. No objection was made to this evidence on any ground pursued in this appeal, and we therefore cannot fault the court for relying on it. Mr. Hughes never gave a reason why he stopped making the weekly payments called for by the agreement; he certainly did not attribute that decision to an inability to make the

payment.[4] On this record, we cannot say that the court was clearly erroneous in finding that Hughes was not insolvent, as that term is defined in § 15-202(a), at the time of the transfer.

At trial, appellant placed into evidence certain liquor license renewal applications and corporate tax returns filed after 1979 in which Hughes had indicated that he was still the sole owner of F. Hughes, Inc. From this, he argues that Hughes is equitably estopped from now denying that representation. The simple answer to this complaint is that it was not raised or decided below. Appellant's argument below was that, by making these assertions, Hughes had

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[4]In his own testimony, appellant recited a conversation in 1982 in which Hughes said simply, "well, I'm not going to pay anymore [sic], I think I've paid enough."

concealed the transfer, and that the concealment supported an inference of fraud. He never argued, however, that Hughes was estopped from asserting that the transfer had been made. Indeed, his action to set aside the transfer as fraudulent rested upon the assumption that the transfer had been made and that the record owners of the stock were Mr. and Mrs. Hughes. It is too late now to inject a whole new theory into the case. Md. Rule 8-131(a).

JUDGMENT AFFIRMED;
APPELLANT TO PAY THE COSTS.

THOMAS J. RALEY	)	IN THE
	)	COURT OF APPEALS
	)	OF MARYLAND
	)	
v.	)	
	)	
FRANKLIN W. HUGHES,	)	Petition Docket
	)	No. 412
et al.	)	
	)	September Term,
	)	1988
	)	(No. 91,
	)	September Term,
	)	1988
	)	Court of
	)	Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answers filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no

showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: January 11, 1989

EXCERPT FROM DEFENDANT-APPELLEES' BRIEF BEFORE THE COURT OF SPECIAL APPEALS OF MARYLAND, SEPTEMBER TERM 1988.

In May of 1975, the Appellant and the Appellee executed an agreement, providing that Mr. Hughes would take title to the business, including the assumption of rent, personal and tangible property of all kinds, furniture and fixtures, and liquor license for the sum of Two Hundred and Fifty Thousand Dollars ($250,000.00). Title was passed to Hughes pursuant to that agreement in 1975.

AGREEMENT - JANUARY 11, 1978

AGREEMENT

IT IS THIS 11 day of Jan, 1978 agreed to by and between THOMAS J. RALEY and FRANK HUGHES, upon good and valuable consideration, the receipt of which is acknowledged as follows:

The parties recognize and agree that in May of 1975 legal title to the business premises known as HOLIDAY HOUSE was transferred from Raley to F. Hughes, Inc., owned by Frank Hughes and that following that period, a refinancing took place whereby the legal title to the real property at 6427 Harford Road, Baltimore, Maryland was transferred from Thomas J. Raley to F. Hughes, Inc., and,

The parties further recognize that the payments to be made by Hughes to Raley for the complete transfer of the business, liquor license, fixtures,

furniture, equipment and real property, was established in 1975 at a figure of Two Hundred Thousand Dollars ($200,000.00). On the basis of the selling price of Two Hundred Thousand Dollars ($200,000.00), Mr. Raley has given credits reducing that figure by Twelve Thousand Dollars ($12,000.00 and has agreed to Mr. Hughes making a repayment of the balance of One Hundred Eighty Eight Thousand Dollars ($188,000.00) beginning on August 1, 1977, with the payments being made in the following manner:

A. For the first year, from August 1, 1977 through July 30, 1978, the sum of Two Hundred Dollars ($200.00) per week will be paid by Mr. Hughes to Mr. Raley pursuant to this agreement.

B. For the next three years, the sum of Three Hundred Dollars ($300.00)

per week will be paid by Mr. Hughes to Mr. Raley pursuant to this agreement.

The parties further agree that the interest rate to be charged on the financing of the balance is 10% per annum. They further agree that at the end of four (4) years there will be a deficit of Twenty Four Thousand Dollars ($24,000.00) being paid because of the reduced monthly and weekly payments.

It is further agreed that beginning with the fifth year, the parties agree to the fact that at that time Two Hundred Twelve Thousand Dollars ($212,000.00) will be due and owing, consisting of principal and interest. Mr. Hughes agrees at that point to begin making payments of Five Hundred Twenty Five Dollars and Seventy Three Cents ($525.73) per week from August 1, 1981 through August 1, 1996 or a period of fifteen

(15) years. The payments shall be made by Mr. Hughes and sent to Mr. Raley at such locations as he may direct.

Mr. Raley agrees and recognizes that there may be times in the future during the term of this agreement that the full payments may not be made by Mr. Hughes, because of the uncertainties involved in the operation of the business in question. At such times as Mr. Hughes is not able to make the full payments on a timely basis, he shall give notice to Mr. Raley of the fact. Mr. Raley agrees that this note will not be in default unless Mr. Hughes shall be in arrears in his payments for a period of three (3) months or longer. In the event Mr. Hughes is deemed to be in default, Mr. Raley agrees further that no action shall be taken on the note until he shall give a notice of default by registered mail to Mr. Hughes

giving Mr. Hughes a period of two (2) weeks thereafter to correct any and all deficiencies in payment.

The parties agree that this note shall be binding upon their heirs, personal representatives and successors.

Mr. Hughes may make partial repayments of this note without penalty at his election.

IN WITNESS WHEREOF, the parties have hereunto executed their hands and seals on the day and year first written above.

WITNESS:

_____ (SEAL)
THOMAS J. RALEY

_____

_____ (SEAL)
FRANK HUGHES

_____

EXCERPT FROM DEFENDANT-APPELLEES' BRIEF BEFORE THE COURT OF SPECIAL APPEALS OF MARYLAND, SPECIAL TERM 1988.

In December of 1979, in order to receive certain tax benefits and at the advice of his accountant, Appellee effected a transfer of all of his shares in F.W. Hughes, Inc. (100 shares on total) to himself and Sandra L. Hughes, his wife, as tenants by the entireties.

SEPTEMBER 22, 1987

Excerpt - Testimony of SANDRA Hughes:

Q Do you remember the amount of the mortgage to the Equitable Trust Company?

A Well, let's see. Sixty, sixty-five thousand for one loan, and around forty, forty-three for the other. Maybe $45,000 for the other loan.

SEPTEMBER 21, 1987

Excerpt - Testimony of Thomas Raley:

They borrowed the money to effectuate debts within the business and pay within the business, structure within. . . . to take care of debts within the business.

JUDGMENT AND EXCERPTS FROM
JUDGMENT WORKSHEET

THOMAS J. RALEY	*	IN THE
	*	CIRCUIT COURT
Plaintiff	*	FOR
	*	BALTIMORE COUNTY
VS:	*	CASE NO:
	*	83-L-149/146/127
FRANKLIN W. HUGHES	*	
	*	
Defendant	*	

* * * * * * * * * * * * * * * * * * *

JUDGMENT

Upon the trial held in this Court on July 17, 1985, and this Court having the opportunity to hear all the parties concerned and review all evidence submitted, it is this 11 day of September, 1985, by the Circuit Court for Baltimore County:

Ordered: That Judgment is hereby entered in favor of the Plaintiff and against the Defendant in the amount of $358,085.20 plus $98.11 interest per day

counting from July 18, 1985, plus court costs to be paid by the Defendant.

_____
JUDGE

Approved as to form:

_____
Melvyn J. Weinstock, Esquire
Weinberger, Weinstock, Sagner,
Stevan & Harris, P.A.
345 N. Charles Street
Baltimore, Maryland 21201-4355

Attorney for Defendant

JUDGMENT WORKSHEET
EXCERPT 1

11/78	Total due on 11/1/78	$197,479.09
	Payments received from 11/1/78-11/18/78	900.00
	Total due on 11/18/78	$196,579.09
	Interest due from 11/1/78-11/18/78 ($196,579.09 * 10% /12)	973.87
	Total due on 11/18/78	$197,552.96
	Interest accrued from 11/18/78-11/18/79 ($197,552.96 x .10)	19,775.30
11/18/79	Total due on 11/18/79	$217,308.26
	Interest accrued between 11/18/79-11/18/80 (217,308.26 x .1)	21,730.83
11/18/80	Total due on 11/18/80	$239,039.08

EXCERPT 2

7/17/85	Total due on 7/17/85	$373,085.20	
	Less credit given at trial	15,000.00	
		$358,085.20	
	Plus		
	Interest per day at 10%/year counting from July 18, 1985		$98.11 per day
	Plus		
	Court costs.		

SEPTEMBER 22, 1987

Excerpt - Testimony of Franklin Hughes:

When Mr. Rose came to see me, we were in financial difficulties with taxes and mortgages. Just about every part of the business was in debt.

SEPTEMBER 22, 1987

Excerpt - Testimony of Melvin Rose

Now, yesterday you submitted to the Court the corporate income tax return and you showed Mr. Hughes's income on the 1980 corporate income tax return as $13,000, did you not?

A Yes, I did.

. . . .

Q And back in 1979, did you have a resolution agreeing to transfer your interest to your wife and yourself?

A Yes. We transferred the stock in '79. I don't know what it is called.

Q Can you tell me why you had a resolution to do that, to transfer the stock?

A Well, I transferred the stock on the advise of Mr. Rose.

Q I understand. But can you tell me the reason why you had to do it by

resolution?

MR. WEINSTOCK: If you know.

A I don't know.

Q You don't know?

A I don't remember.

SEPTEMBER 22, 1987

Excerpt - Testimony of SANDRA Hughes:

Q When you got the interest in your stock -- strike that. In 1975, when you signed your name on the mortgage to the Equitable, was it your understanding that you would be a half owner in the 408 Holiday House, F. Hughes, Inc.?

A Yes.

SEPTEMBER 21, 1987

Excerpt - Testimony of Thomas Raley:

Q Mr. Raley, the stock transfer between Franklin W. Hughes to Franklin W. Hughes and Sandra L. Hughes, you first found out in 1985 that was done; is that correct?

A That's correct.

Q And when was that done, to your knowledge?

A Well, when I filed for seizing the stock, their answer back was the stock was not held by Mr. Hughes; it was held by them jointly.

SEPTEMBER 22, 1987

Excerpt - Testimony of Franklin Hughes:

Q Now, in 1979, when you transferred the stock, were you paying your bills?

A Yes, I was paying my bills.

SEPTEMBER 22, 1987

Excerpt - Testimony of Melvin Rose

Q At that time, was Mr. Hughes solvent?

A Yes, he was, to the best of my knowledge.

SEPTEMBER 22, 1987

Excerpt - Testimony of SANDRA Hughes:

A Well, we had a lot of bills to be paid. We didn't have any money.

Q Right.

A We just -- we were going bankrupt. We didn't have any money. There was no money coming in. Everybody -- we owed everybody.

SEPTEMBER 22, 1987

Excerpt - Argument to the court,
Melvyn Weinstock, counsel for
Defendants:

MR. WEINSTOCK: Your Honor, I didn't ask him what his assets were on direct. I only asked if he was solvent or insolvent. He says he was solvent. A man doesn't have to know the assets if he was solvent. I asked if there were any judgments, attachments, any outstanding foreclosures. He went through all of that and said no. The man doesn't have to know if he had stock in a gold mine in Ethiopia.

SEPTEMBER 22, 1987

Excerpt - Testimony of Melvin Rose

Q Now, what kinds of assets did Mr. Hughes have in 1979? He, personally, what kinds of assets did he have?

A None to my knowledge.

MR. WEINSTOCK: Your Honor, I would object to this.

THE COURT: Sustained.

MR. KELLER: Your Honor, he said that he was solvent. Certainly he has a basis or a foundation for that solvency.

THE COURT: He said he was solvent in 1980. He didn't know about 1979.

MR. KELLER: Fine